

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- x  
JOSEPH RAKOFSKY, and RAKOFSKY LAW : Index No. 105573/2011  
FIRM, P.C., :  
 :  
Plaintiffs, : **AFFIRMATION OF**  
 : **JENNIFER L. JONES**  
- against - :  
 :  
THE WASHINGTON POST, *et al.*, :  
 :  
Defendants. :  
 :  
----- x

Jennifer L. Jones, an attorney in good standing admitted to practice in the Courts of the State of New York, hereby affirms under penalties of perjury that:

1. I am an attorney with Proskauer Rose LLP, attorneys for defendants the American Bar Association, Debra Cassens Weiss, and Sarah Randag (collectively, the “ABA Defendants”). This affirmation is submitted in support of the ABA Defendants’ reply memorandum in support of their motion for costs and reasonable attorney’s fees pursuant to CPLR § 8303-a and NYCRR § 130-1.1(a).

2. On November 28, 2012, I caused the ABA Defendants’ moving papers in support of the instant motion to be served by hand on Plaintiffs’ counsel, Matthew H. Goldsmith, Esq. Exhibit A is a true and correct copy of the delivery receipt for the motion.

3. The motion was made on 16 days’ notice and preserved the ABA Defendants’ right of reply. Accordingly, Plaintiffs’ opposition papers, if any, were originally due on December 7, 2012.

4. On December 6, 2012 at approximately 3pm eastern, Mr. Goldsmith telephoned me to request an extension of time for Plaintiffs to oppose the ABA Defendants’ motion. Mr.

Goldsmith proposed a new return date in early January, which would have given Plaintiffs over one month to serve their opposition. During this call, I informed Mr. Goldsmith that I was surprised to receive this request on the eve of his deadline to serve an opposition and that I would need to check with my colleagues at Proskauer and the client before agreeing to grant an extension.

5. Mr. Goldsmith followed up his request with an email sent solely to me at 3:31pm eastern, approximately 30 minutes after our telephone call. In this email, Mr. Goldsmith for the first time claimed that his motion papers were not due on December 7, but instead need not be filed until December 12 because, allegedly, the ABA Defendants had not preserved their right of reply. Mr. Goldsmith suggested that if the ABA Defendants wanted an opportunity to reply to his opposition, they would have to enter into the stipulation he provided, which would adjourn the return date of the motion to January 9, 2013. Exhibit B is a true and correct copy of Mr. Goldsmith's email with the attached proposed stipulation.

6. I responded to Mr. Goldsmith's email at 4:03pm eastern on the same day. In my email, I corrected Mr. Goldsmith's inaccurate statement that our papers had been served by U.S. Mail, provided him with proof of hand delivery to his office on November 28, 2012, and advised that therefore the ABA Defendants had preserved their right of reply. Exhibit C is a true and correct copy of this email.

7. Later on December 6, at 6:30pm eastern, I made a counterproposal to Mr. Goldsmith's request for additional time. The counterproposal granted Plaintiffs an extension to serve their opposition until December 13, 2012, which gave Plaintiffs a total of 15 days to respond to the ABA Defendants' motion. The ABA Defendants reserved 7 days for reply. I specifically included in the stipulation that service of papers would be by electronic mail so that

the parties would not lose time for service by mail or otherwise. Mr. Goldsmith agreed to this proposal and informed me that he would submit the stipulation at the calendar call of the motion. Exhibit D is a true and correct copy of this email exchange, including a copy of the counter-signed stipulation.

8. Mr. Goldsmith did not serve the ABA Defendants with opposition papers on December 13. On that date, at approximately 10:45pm eastern, I sent Mr. Goldsmith an email inquiring as to why we had not yet received his papers. Mr. Goldsmith responded at approximately 11:40pm eastern that he would serve his papers on December 14, 2012. Exhibit E is a true and correct copy of this email exchange.

9. Mr. Goldsmith failed to serve any opposition papers on December 14, 2012, or at any time prior to the December 21, 2012 stipulated return date for the instant motion. Nor did he contact me or any colleague of mine during the intervening days to explain why he had not served his opposition and whether he still planned to do so.

10. At my direction, on the morning of December 21, 2012, an associate in my law firm, Samantha Springer, attended the calendar call for the return date of the motion. I understand from my conversation with Ms. Springer that Plaintiffs' counsel did not appear for the calendar call and the ABA Defendants' motion was submitted without opposition.

11. Later on December 21, 2012, I learned that Mr. Goldsmith had contacted a partner in our New York office who is not now and has never been involved with this case. Mr. Goldsmith apparently misled this partner regarding the status of the pending motion in order to obtain her consent to file his belated opposition papers. *See* January 16, 2012 Affirmation of Margaret A. Dale, filed concurrently herewith ("Dale Aff.").

12. Ms. Dale and I then called Mr. Goldsmith together at approximately 12pm eastern to demand that he rectify his request for consent to file his belated opposition under false pretenses. We further demanded that Mr. Goldsmith serve his opposition papers, which we had not yet received, despite his representations to the contrary.

13. Specifically, Mr. Goldsmith had represented to Ms. Dale earlier that morning that he had filed his opposition papers on counsel for the ABA Defendants by U.S. Mail on December 20, 2012. Dale Aff. ¶ 5. Mr. Goldsmith also swore, under penalty of perjury, that he had served his opposition on December 20 in the Affirmation of Service accompanying Plaintiffs' opposition. Exhibit F is a true and correct copy of Mr. Goldsmith's Affirmation of Service.

14. Mr. Goldsmith's representation and affirmation regarding the date of service are false; in fact, Mr. Goldsmith did not serve Plaintiffs' papers on counsel for the ABA Defendants until December 21, 2012, the same day that he called Ms. Dale, as proved by the postmark on the service envelope containing Plaintiffs' opposition papers. Exhibit G is a true and correct copy of the service envelope, which reflects a postmark of December 21, 2012.

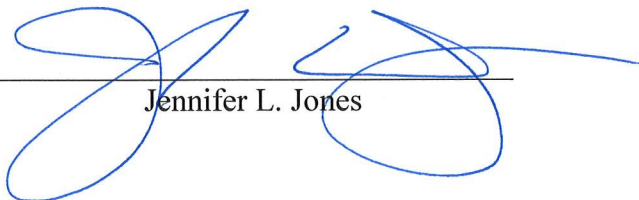
15. Shortly after Ms. Dale and I spoke with Mr. Goldsmith on December 21, I received an electronic notification from the Court that the return date of the motion had been adjourned to January 17, 2013.

16. In subsequent email correspondence on December 21, Mr. Goldsmith revealed that he never had any intention of abiding by the agreed-upon stipulation. Instead, Mr. Goldsmith executed the stipulation with every intention of making a later application to the Court to submit his opposition at the return date of the motion. Exhibit H is a true and correct copy of Mr. Goldsmith's December 21 email wherein he states, "I initially requested a 3 week

adjournment from you, that request was denied and you only consented to one, therefore my only remedy for additional time was to make an application to the court.” (The email attachment is a copy of Plaintiffs’ opposition papers and is not included in Exhibit H.)

17. In my opinion, Mr. Goldsmith intentionally did not contact me to request my consent to file his belated opposition papers on December 21, 2012. I would not, and the ABA Defendants do not now, consent to their untimely filing, which is in violation of the parties’ agreed-to stipulation (*see* Exhibit D). At all times during the pendency of this motion, Mr. Goldsmith has negotiated any extension for Plaintiffs’ papers with me and only with me. Although I am currently resident in the Los Angeles office of Proskauer Rose, my New York direct dial is still operational and rings at my desk in Los Angeles. Moreover, any employee at Proskauer Rose would be able to transfer Mr. Goldsmith to my line. Mr. Goldsmith had no trouble contacting me when he sought an initial extension, which the ABA Defendants granted and which Mr. Goldsmith intentionally violated.

Los Angeles, California  
January 15, 2013



---

Jennifer L. Jones

# EXHIBIT A

22-19.  
m.w.f.

DATE November 28, 2012	CLIENT 16480	MATTER 001	DATE OF SERVICE 11/28/12
REQUESTED BY Jennifer L. Jones	MESSENGER NO. RUSSELL		CONTROL NUMBER 56253
DELIVER AFTER			TIME

**DELIVERY RECEIPT**

ADDRESSEE Matthew H. Goldsmith, Esq. Goldsmith & Associates 350 Broadway 10th Floor New York, New York 10013		
2012 NOV 28 P 4:20 DELIVER AFTER		
RECEIVED BY	DATE 11/28/12	TIME 4:05 PM
PRINT NAME Jojo Huang	RETURN RECEIPT REQUESTED - NO	ROOM NO.

Proskauer»

# **EXHIBIT B**



**Jones, Jennifer L.**

---

**From:** mhgoldsmith@mgaplaw.com  
**Sent:** Thursday, December 06, 2012 12:31 PM  
**To:** Jones, Jennifer L.  
**Subject:** Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)  
**Follow Up Flag:** Follow up  
**Flag Status:** Green  
**Categories:** Filed To Worksite  
**Attachments:** CCF06122012\_00003.pdf

Please see letter and stipulation attached-

Matthew H. Goldsmith, Esq.  
**Goldsmith & Associates, PLLC**  
350 Broadway, 10th Floor  
New York, NY 10013

*office* (212) 217-1594  
*fax* (212) 226-3224  
[mgaplaw.com](http://mgaplaw.com)

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LAW OFFICE OF  
GOLDSMITH & ASSOCIATES, PLLC

---



350 Broadway  
10<sup>th</sup> Floor  
New York, NY 10013

tel (212) 217-1594  
fax (212) 226-3224  
mgaplaw.com

*by U.S. First-Class Mail & e-mail*

December 6, 2012

Jennifer L. Jones, Esq.  
Proskauer Rose, LLP  
2049 Century Park East  
Los Angeles, CA 90067-3206  
*jljones@proskauer.com*

Re: *Adjournment of Return Date*  
*Rakofsky v. Washington Post, et. al.*  
Index No.: 105573/2011

Dear Ms. Jones,

To follow-up our phone conversation today, I kindly request a brief adjournment of the motion return date in the above-referenced matter and currently scheduled for December 14, 2012. I have included a stipulation for your review with a return date of January 9, 2012.

If I hear no response or this request is denied, my opposition shall be served on or before December 12, 2012, in accordance with the CPLR, as the motion does not preserve the defendant's right to be furnished with opposition seven days prior to the return date. *See*, CPLR § 2103(b)(2)(five-day addition).

If you have any questions, please contact me anytime.

Very Truly Yours,

MATTHEW H. GOLDSMITH, ESQ.

cc: Joseph Rakofsky, Esq.

*Encl.*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM

-----X  
JOSEPH RAKOFSKY,

*Plaintiff,*

**STIPULATION**

—against—

Index No.: 105573/2011

WASHINGTON POST COMPANY, *et. al.*,

*Defendants.*  
-----X

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the return date for the defendant's motion, dated November 28, 2012 and currently returnable on December 14, 2012 be adjourned to January 9, 2012 with opposition papers and reply to be served in accordance with the CPLR.

A facsimile or copy of this stipulation shall constitute an original.

DATED: New York, New York  
December 6, 2012



MATTHEW H. GOLDSMITH, ESQ.  
Goldsmith & Associates, PLLC  
*Attorneys for Plaintiff*  
350 Broadway, 10<sup>th</sup> Fl.  
New York, NY 10013  
(212) 217-1594/fax (212) 226-3224  
*mhgoldsmit@mgaplaw.com*

.....  
*Attorneys for Defendant*

# EXHIBIT C

**Jones, Jennifer L.**

---

**From:** Jones, Jennifer L.  
**Sent:** Thursday, December 06, 2012 1:03 PM  
**To:** 'mhgoldsmith@mgaplaw.com'  
**Cc:** Harris, Mark D.  
**Subject:** RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)  
**Attachments:** Notice of Motion by ABA, D. Cassens Weiss, & S. Randag for Cost and Reasonable Attorney\_s Fees.PDF; Delivery Receipt.pdf

Mr. Goldsmith:

When we spoke on the phone a few moments ago, I mentioned to you that your opposition is due tomorrow. You made no mention of the position taken now in your letter that your opposition is allegedly not due until December 12. Your position is meritless. The ABA's motion was served on you by hand on November 28, and the notice of motion explicitly preserves the ABA's right to reply. (I have attached the delivery receipt and a copy of the ABA's notice of motion here.) Consequently, CPLR 2103(b)(2) does not apply, your opposition is due tomorrow, and it will be untimely if we do not receive it by the end of the day tomorrow (unless the ABA agrees to an extension).

As I told you on the phone, I will get back to you about your request as soon as I can. I note, however, that you have had our papers for over a week, but did not make this request until approximately 3pm on the day before your papers are due.

Sincerely,

Jennifer Jones

**Jennifer L. Jones**

Attorney at Law

[Proskauer](#)

2049 Century Park East, Suite 3200  
Los Angeles, CA 90067-3206  
d 310.284.4509  
f 310.557.2193  
[jjones@proskauer.com](mailto:jjones@proskauer.com)

greenspaces

Please consider the environment before printing this email.

---

**From:** mhgoldsmith@mgaplaw.com [mailto:mhgoldsmith@mgaplaw.com]  
**Sent:** Thursday, December 06, 2012 12:31 PM  
**To:** Jones, Jennifer L.  
**Subject:** Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)

Please see letter and stipulation attached-

Matthew H. Goldsmith, Esq.  
**Goldsmith & Associates, PLLC**  
350 Broadway, 10th Floor  
New York, NY 10013

*office* (212) 217-1594  
*fax* (212) 226-3224  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- x

JOSEPH RAKOFSKY, and RAKOFSKY LAW : Index No. 105573/2011  
FIRM, P.C.,

Plaintiffs,

- against -

THE WASHINGTON POST, *et al.*,

Defendants.

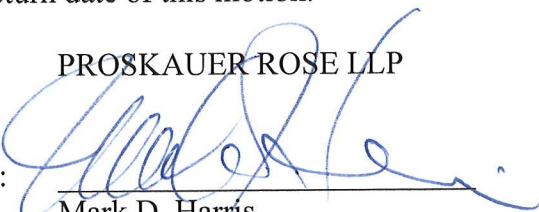
:  
: **NOTICE OF MOTION BY THE**  
: **AMERICAN BAR ASSOCIATION,**  
: **DEBRA CASSENS WEISS, AND**  
: **SARAH RANDAG FOR COSTS**  
: **AND REASONABLE**  
: **ATTORNEY'S FEES**

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PLEASE TAKE NOTICE that upon the annexed Affirmation of Mark D. Harris and the exhibits thereto and the accompanying Memorandum of Law, the undersigned will move this Court, at Room 130, at the Courthouse, 60 Centre Street, New York, NY 10007 on December 14, 2012 at 9:30 a.m. or as soon thereafter as counsel may be heard for an order pursuant to CPLR § 8303-a and NYCRR § 130-1.1(a) awarding to Defendants the American Bar Association, abajournal.com (to the extent any such entity exists), Debra Cassens Weiss, and Sarah Randag (collectively, the "ABA Defendants") their costs and reasonable attorney's fees against Plaintiffs and their counsel, and granting such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b), answering papers, if any, in opposition to this Motion must be served upon the undersigned counsel for the ABA Defendants at least seven (7) days prior to the return date of this motion.

Dated: November 28, 2012  
New York, NY

PROSKAUER ROSE LLP  
  
By: \_\_\_\_\_  
Mark D. Harris  
Jennifer L. Jones  
Eleven Times Square

New York, NY 10036  
(212) 969-3000

*Attorneys for the American Bar Association,  
abajournal.com, Debra Cassens Weiss, and  
Sarah Randag*

To: Matthew H. Goldsmith, Esq.  
Goldsmith & Associates  
350 Broadway  
10<sup>th</sup> Floor  
New York, NY 10013  
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blog.simplejustice.us, Kravet & Vogel, LLP,  
Carolyn Elefanr, MyShingle.com, Mark Bennett,  
Bennett And Bennett, Eric I. Mayer, Eric I. Mayer,  
Attorney-at-Law, Nathaniel Burney, The Burney  
Law Finn, LLC, Josh King, Avvo, Inc., Jeff Gamso,  
George M Wallace, Wallace, Brown & Schwartz,  
"Tarrant84", Banned Ventures, Banni, Brian I.  
Tannebaum, Tannebaum Weiss, Colin Samuels,  
Accela, Inc., Crime and Federalism, John Doe #1,*



*Antonin I. Pribetic, Steinberg Morton, Elie Mystal,  
AboveTheLaw.com, Breaking Media, LLC*

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cpatil@wc.com

*Attorneys for Defendants The Washington Post  
Company, Keith Alexander, and Jennifer Jenkins*

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Mace J. Yampolsky Ltd.*

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*Attorney for Defendants The Law Office of Jeanne  
O'Halleran, LLC and Jeanne O'Halleran*

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robbalin@dwt.com

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Washington City Paper and Rend Smith*

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Levine Sullivan Koch & Schulz, LLP  
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(212) 850-6100

*Attorney for Defendants Allbritton Communications  
Company and TBD.com*

Edward F. Westfield  
Edward F. Westfield, P.C.  
274 Madison Avenue, Suite 1601  
New York, New York 10016  
(212) 532-6625

*Attorney for Defendants Gamsco, Helmick &  
Hoolahan*

22-19.  
m.w.f.

DATE November 28, 2012	CLIENT 16480	MATTER 001	DATE OF SERVICE 11/28/12
REQUESTED BY Jennifer L. Jones	MESSENGER NO. RUSSELL		CONTROL NUMBER 56253
DELIVER AFTER			TIME

**DELIVERY RECEIPT**

ADDRESSEE Matthew H. Goldsmith, Esq. Goldsmith & Associates 350 Broadway 10th Floor New York, New York 10013		
2012 NOV 28 P 4:20 DELIVER AFTER		
RECEIVED BY	DATE 11/28/12	TIME 4:05 PM
PRINT NAME Jojo Huang	RETURN RECEIPT REQUESTED - NO	ROOM NO.

Proskauer»

# **EXHIBIT D**

Jones, Jennifer L.

**From:** mhgoldsmith@mgapl.com  
**Sent:** Thursday, December 06, 2012 7:02 PM  
**To:** Jones, Jennifer L.  
**Subject:** RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)  
**Attachments:** CCF06122012\_00006.pdf

Looks fine.

I'll ensure that it's submitted on the return date. Enclosed is a fully executed copy.

Thank you for your consideration,

Matt

----- Original Message -----

Subject: RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)  
 From: "Jones, Jennifer L." <[jljones@proskauer.com](mailto:jljones@proskauer.com)>  
 Date: Thu, December 06, 2012 6:30 pm  
 To: [mhgoldsmith@mgapl.com](mailto:mhgoldsmith@mgapl.com)  
 Cc: "Harris, Mark D." <[MHarris@proskauer.com](mailto:MHarris@proskauer.com)>

Mr. Goldsmith:

The ABA is willing to agree to the attached stipulation.

**Jennifer L. Jones**

Attorney at Law

[Proskauer](#)

2049 Century Park East, Suite 3200  
 Los Angeles, CA 90067-3206  
 d 310.284.4509  
 f 310.557.2193

[jljones@proskauer.com](mailto:jljones@proskauer.com)

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---

**From:** [mhgoldsmith@mgapl.com](mailto:mhgoldsmith@mgapl.com) [<mailto:mhgoldsmith@mgapl.com>]  
**Sent:** Thursday, December 06, 2012 1:17 PM  
**To:** Jones, Jennifer L.  
**Subject:** RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)

Ms. Jones

I wasn't aware that the motion was served by hand, if that's the case then you are correct.

Either way, there is no way I will have my opposition by tomorrow. The NY Sup. court almost routinely grants an adjournment when a case is on for the first time, particularly when the absolute minimum opposition time is given.

The stipulation is so that an appearance is not necessary.

Please let me know,

Matt

----- Original Message -----

Subject: RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)  
 From: "Jones, Jennifer L." <[jljones@proskauer.com](mailto:jljones@proskauer.com)>  
 Date: Thu, December 06, 2012 4:02 pm  
 To: [mhgoldsmith@mgapl.com](mailto:mhgoldsmith@mgapl.com)  
 Cc: "Harris, Mark D." <[MHarris@proskauer.com](mailto:MHarris@proskauer.com)>

Mr. Goldsmith:

When we spoke on the phone a few moments ago, I mentioned to you that your opposition is due tomorrow. You made no mention of the position taken now in your letter that your opposition is allegedly not due until December 12. Your position is meritless. The ABA's motion was served on you by hand on November 28, and the notice of motion explicitly preserves the ABA's right to reply. (I have attached the delivery receipt and a copy of the ABA's notice of motion here.) Consequently, CPLR 2103(b)(2) does not apply, your opposition is due tomorrow, and it will be untimely if we do not receive it by the end of the day tomorrow (unless the ABA agrees to an extension).

As I told you on the phone, I will get back to you about your request as soon as I can. I note, however, that you have had our papers for over a week, but did not make this request until approximately 3pm on the day before your papers are due.

Sincerely,

Jennifer Jones

**Jennifer L. Jones**

Attorney at Law

[Proskauer](#)

2049 Century Park East, Suite 3200  
 Los Angeles, CA 90067-3206

d 310.284.4509  
f 310.557.2193  
[jjones@proskauer.com](mailto:jjones@proskauer.com)

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---

**From:** [mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com) [<mailto:mhgoldsmith@mgaplaw.com>]  
**Sent:** Thursday, December 06, 2012 12:31 PM  
**To:** Jones, Jennifer L.  
**Subject:** Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)

Please see letter and stipulation attached-

Matthew H. Goldsmith, Esq.  
**Goldsmith & Associates, PLLC**  
350 Broadway, 10th Floor  
New York, NY 10013

*office* (212) 217-1594  
*fax* (212) 226-3224  
[mgaplaw.com](http://mgaplaw.com)

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\*\*\*\*\* To ensure compliance with requirements imposed by U.S. Treasury Regulations, Proskauer Rose LLP informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. \*\*\*\*\*

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=====

\*\*\*\*\* To ensure compliance with requirements imposed by U.S. Treasury Regulations, Proskauer Rose LLP inform

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- x

JOSEPH RAKOFSKY, and : Index No. 105573/2011  
RAKOFSKY LAW FIRM, P.C., :

Plaintiffs,

- against -

**STIPULATION**

THE WASHINGTON POST COMPANY, :  
AMERICAN BAR ASSOCIATION, :  
ABAJOURNAL.COM, DEBRA CASSENS :  
WEISS, SARAH RANDAG, *et al.* :

Defendants.

----- x

WHEREAS, by Notice of Motion dated November 28, 2012, defendants the American Bar Association, Debra Cassens Weiss, and Sarah Randag (the “ABA Defendants”) moved to recover their costs and reasonable attorneys fees against Plaintiffs and their counsel (the “costs and fees motion”);

WHEREAS, said motion is now returnable on December 14, 2012; and

WHEREAS, there has been no prior adjournment of the return date of said motion;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties hereto, through their undersigned counsel, that (i) the return date of the ABA Defendant’s costs and fees motion shall be adjourned from December 14, 2012 to December 21, 2012; (ii) plaintiff must serve opposition papers by electronic mail on the ABA Defendants on or before December 13, 2012; and (iii) the ABA Defendant must serve reply papers by electronic mail on or before December 20, 2012.

IT IS FURTHER STIPULATED AND AGREED that this stipulation may be signed in counterparts, all of which together shall constitute a single document, and that facsimile and electronic signatures shall be deemed originals.

Dated: December 6, 2012  
New York, NY

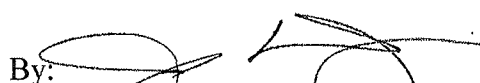
GOLDSMITH & ASSOCIATES, PLLC

By:   
Matthew H. Goldsmith, Esq.

350 Broadway, 10<sup>th</sup> Fl.  
New York, NY 10013  
(212) 217-1594

*Attorney for Plaintiffs*

PROSKAUER ROSE LLP

By:   
Mark D. Harris, Esq.  
Jennifer L. Jones, Esq.

Eleven Times Square  
New York, NY 10036  
(212) 969-3000

*Attorneys for Defendants American  
Bar Association, Debra Cassens  
Weiss and Sarah Randag*



# **EXHIBIT E**

**Jones, Jennifer L.**

---

**From:** Matthew H. Goldsmith, Esq. [mhgoldsmith@mgaplaw.com]  
**Sent:** Thursday, December 13, 2012 8:41 PM  
**To:** Jones, Jennifer L.  
**Cc:** Harris, Mark D.  
**Subject:** Re: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)  
 Despite my best efforts, it will be served tomorrow. If this is not acceptable, I guess we will have to speak with the judge.  
 Thank you,  
 Matt

Sent from my iPhone

On Dec 13, 2012, at 10:43 PM, "Jones, Jennifer L." <[jljones@proskauer.com](mailto:jljones@proskauer.com)> wrote:

Mr. Goldsmith:

It is almost 11pm Eastern, and we still have not received your papers, which by stipulation are to be served on us by email today. Please send them to Mark Harris and me asap.

Thanks,

Jennie

Jennifer L. Jones | PROSKAUER ROSE LLP  
 2049 Century Park East, Suite 3200 | Los Angeles, CA 90067-3206  
 V: 310.284.4509 | F: 310.557.2193  
[jljones@proskauer.com](mailto:jljones@proskauer.com) | [www.proskauer.com](http://www.proskauer.com)

---

**From:** [mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com) [mailto:[mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com)]  
**Sent:** Thursday, December 06, 2012 10:01 PM  
**To:** Jones, Jennifer L.  
**Subject:** RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)

Looks fine.  
 I'll ensure that it's submitted on the return date. Enclosed is a fully executed copy.  
 Thank you for your consideration,  
 Matt

----- Original Message -----

Subject: RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)  
 From: "Jones, Jennifer L." <[jljones@proskauer.com](mailto:jljones@proskauer.com)>  
 Date: Thu, December 06, 2012 6:30 pm  
 To: [mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com)  
 Cc: "Harris, Mark D." <[MHarris@proskauer.com](mailto:MHarris@proskauer.com)>

Mr. Goldsmith:

The ABA is willing to agree to the attached stipulation.

**Jennifer L. Jones**  
 Attorney at Law

[Proskauer](http://Proskauer)  
 2049 Century Park East, Suite 3200  
 Los Angeles, CA 90067-3206  
 d 310.284.4509  
 f 310.557.2193  
[jljones@proskauer.com](mailto:jljones@proskauer.com)

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**From:** [mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com) [mailto:[mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com)]  
**Sent:** Thursday, December 06, 2012 1:17 PM  
**To:** Jones, Jennifer L.  
**Subject:** RE: Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)

Ms. Jones

I wasn't aware that the motion was served by hand, if that's the case then you are correct.  
 Either way, there is no way I will have my opposition by tomorrow. The NY Sup. court almost routinely grants an adjournment when a case is on for the first time, particularly when the absolute minimum opposition time is given. The stipulation is so that an appearance is not necessary.  
 Please let me know,

Matt

----- Original Message -----

Subject: RE: Motion Return Date (Rakofsky v. Washington Post, et. al.;  
Index No. 105573/2011)  
From: "Jones, Jennifer L." <ljones@proskauer.com>  
Date: Thu, December 06, 2012 4:02 pm  
To: mhgoldsmith@mgaplaw.com  
Cc: "Harris, Mark D." <MHarris@proskauer.com>

Mr. Goldsmith:

When we spoke on the phone a few moments ago, I mentioned to you that your opposition is due tomorrow. You made no mention of the position taken now in your letter that your opposition is allegedly not due until December 12. Your position is meritless. The ABA's motion was served on you by hand on November 28, and the notice of motion explicitly preserves the ABA's right to reply. (I have attached the delivery receipt and a copy of the ABA's notice of motion here.) Consequently, CPLR 2103(b)(2) does not apply, your opposition is due tomorrow, and it will be untimely if we do not receive it by the end of the day tomorrow (unless the ABA agrees to an extension).

As I told you on the phone, I will get back to you about your request as soon as I can. I note, however, that you have had our papers for over a week, but did not make this request until approximately 3pm on the day before your papers are due.

Sincerely,

Jennifer Jones

Jennifer L. Jones  
Attorney at Law

Proskauer  
2049 Century Park East, Suite 3200  
Los Angeles, CA 90067-3206  
d 310.284.4509  
f 310.557.2193  
ljones@proskauer.com

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**From:** mhgoldsmith@mgaplaw.com [mailto:mhgoldsmith@mgaplaw.com]  
**Sent:** Thursday, December 06, 2012 12:31 PM  
**To:** Jones, Jennifer L.  
**Subject:** Motion Return Date (Rakofsky v. Washington Post, et. al.; Index No. 105573/2011)

Please see letter and stipulation attached-

Matthew H. Goldsmith, Esq.  
**Goldsmith & Associates, PLLC**  
350 Broadway, 10th Floor  
New York, NY 10013

office (212) 217-1594  
fax (212) 226-3224  
mgaplaw.com

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immediately.

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# **EXHIBIT F**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM

-----X  
JOSEPH RAKOFSKY,

*Plaintiff,*

—against—

WASHINGTON POST COMPANY, *et. al.*,

*Defendants.*  
-----X

**AFFIRMATION OF  
SERVICE BY MAIL**

Index No.: 105573/2011

MATTHEW H. GOLDSMITH, ESQ., admitted to practice law in New York State,  
affirms the following under the penalty of perjury:

1. I am not a party to this action and am over the age of seventeen (17);
2. Service of the *Affirmation in Opposition*, dated December 20, 2012, was made by U.S. First-Class Mail, on December 20, 2012, upon the party's attorney and addressed to:

Mark D. Harris  
Jennifer L. Jones  
Prokauer Rose LLP  
11 Times Square  
New York, NY 10036

DATED: New York, New York  
December 21, 2012

Respectfully Submitted,



MATTHEW H. GOLDSMITH, ESQ.  
Goldsmith & Associates, PLLC  
350 Broadway, 10<sup>th</sup> Fl.  
New York, NY 10013  
(212) 217-1594 / fax (212) 226-3224  
[mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com)

# **EXHIBIT G**

Goldsmith & Associates, PLLC  
350 Broadway  
10<sup>th</sup> Floor  
New York, NY 10013

**F**



U.S. POSTAGE  
**\$1.90**  
FCM LG ENV  
10001  
Date of sale  
12/21/12  
06 2S00  
08336987  
APC  
FCO 168900 105468

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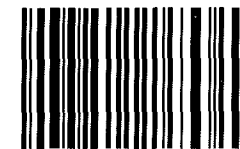
0 lb. 5.30 oz.

SHIP  
TO:

**NEW YORK NY 10036**



**ZIP**



**(420) 10036**

*22*

Mark D. Harris, Esq.  
Proskauer Rose LLP  
11 Times Square  
New York, NY 10036



# EXHIBIT H

Jones, Jennifer L.

**From:** mhgoldsmith@mgaplav.com  
**Sent:** Friday, December 21, 2012 1:36 PM  
**To:** Jones, Jennifer L.; Harris, Mark D.  
**Subject:** RE: Motion - Rakofsky v. Washington Post; 105573/2011  
**Attachments:** CCF21122012\_00000.pdf

Ms. Jones,

I initially requested a 3 week adjournment from you, that request was denied and you only consented to one, therefore my only remedy for additional time was to make an application to the court. I attempted to do this today and had I arrived in the part 10 minutes earlier, I would have been able to. Had that application been made, it would have almost certainly been granted, as it is not uncommon practice in NY Supreme for attorneys to stipulate to one adjournment without it having any relevance or bearing on a subsequent request made without consent, especially where no more than 3 total adjournments have been granted and the request is made within 60 days from the motion's filing date, neither of which were the case here.

Again, my request to Ms. Dale was not under false pretenses. I spoke to Mr. Harris' secretary who attempted to locate him and told me that his assistant was out for the day, surely he would have been aware of the situation of this case had we spoken. I assure you that my failure to ask to connect to you in California was not part of a plan where I anticipated just missing the calendar call, Mr. Harris' subsequent unavailability and the clerk's own suggestion to contact any Proskauer attorney, all to ultimately dupe an unsuspecting partner to give consent to a request that would have been granted anyway, either upon an informal application next week or by a motion to vacate a default, for which a reasonable excuse could be attested to by the room 130 clerk himself and a meritorious defense as stated in the annexed motion.

As I stated earlier, if you wish to seek judicial intervention on this issue, I am more than willing to cooperate and state what I have explained to you and Ms. Dale on the phone and in my emails. In the end, all am I trying to do is respond to a motion.

Very Truly Yours,

Matthew H. Goldsmith, Esq.  
**Goldsmith & Associates, PLLC**  
 350 Broadway, 10th Floor  
 New York, NY 10013

office (212) 217-1594  
 fax (212) 226-3224  
[mgaplav.com](http://mgaplav.com)

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----- Original Message -----

Subject: RE: Motion - Rakofsky v. Washington Post; 105573/2011  
 From: "Jones, Jennifer L." <[jjones@proskauer.com](mailto:jjones@proskauer.com)>  
 Date: Fri, December 21, 2012 3:15 pm  
 To: [mhgoldsmith@mgaplav.com](mailto:mhgoldsmith@mgaplav.com)  
 Cc: "Harris, Mark D." <[MHarris@proskauer.com](mailto:MHarris@proskauer.com)>

Mr. Goldsmith:

As you know, all communications regarding the timing of Plaintiffs' opposition to the ABA's motion have been conducted between you and me. There is no excuse for your having failed to communicate with me regarding your request today. Any Proskauer employee can transfer you to my line, and my New York direct dial is still in operation. You had no trouble contacting me to ask for an initial extension of time to file opposition papers. The ABA stipulated to an extension, and you failed to abide by that stipulation. Your request for an adjournment today was made to Ms. Dale under false pretenses.

The motion apparently has been put back on the calendar and adjourned to January 17. The ABA does not consent to your untimely opposition, and the ABA reserves all rights in this regard.

We have not received your papers, and we demand that you serve them asap by reply email to Mark Harris and me.

Sincerely,

**Jennifer L. Jones**  
 Attorney at Law

[Proskauer](http://Proskauer)  
 2049 Century Park East, Suite 3200  
 Los Angeles, CA 90067-3206  
 d 310.284.4509  
 f 310.557.2193  
[jjones@proskauer.com](mailto:jjones@proskauer.com)

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1/15/2013

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**From:** [mhgoldsmith@mgaplaw.com](mailto:mhgoldsmith@mgaplaw.com) [<mailto:mhgoldsmith@mgaplaw.com>]  
**Sent:** Friday, December 21, 2012 10:41 AM  
**To:** Jones, Jennifer L.; Dale, Margaret A.  
**Subject:** Motion - Rakofsky v. Washington Post; 105573/2011

Counselors:

First, I would like to apologize for what happened this morning, but I assure you that it was not my intention to mislead anybody. I mistakenly believed that the motion was returnable in J. Hagler's part, and then realized that it was actually returnable in room 130 and hurried over. As I entered, the calendar call was taking place, but your motion had been called. I spoke to the clerk to explain that I missed the call and he informed me that Proskauer was present but left and that I needed to contact the attorney who submitted the motion immediately for consent to file my opposition and schedule a return date while he was present as the part was about to close. I contacted the number on the notice of motion and requested to speak with Mr. Mark D. Harris, but was told that he was unavailable. I hung up and the clerk recommended that I call back and make my request to a managing partner or any attorney. I called Proskauer back and explained to the same person who answered the instructions I was just given, that I was present with the clerk in court and was then connected with Ms. Dale whom I spoke with. In retrospect, perhaps I should have informed Ms. Dale about the stipulation, however neither that was not on my mind nor to contact Ms. Jones in California and who's contact information I didn't have with me, all while I was being rushed with the clerk waiting. At all times I answered the questions of Proskauer honestly and while the clerk was present listening to the conversation.

If your office feels my conversation with Ms. Dale was in anyway misleading, of course I will arrange for a conference call to be scheduled to explain to the court in detail what happened. To avoid this, I kindly ask that your office contact the client to see if it will consent to late service, thereby making any application moot.

Again, my sincerest apologies and I shall fully cooperate in rectifying this situation. I will be in my office all of next week if you'd like to contact me or anytime by cell at (917) 488-2181.

Very Truly Yours,

Matthew H. Goldsmith, Esq.  
**Goldsmith & Associates, PLLC**  
350 Broadway, 10th Floor  
New York, NY 10013

*office* (212) 217-1594  
*fax* (212) 226-3224  
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